

**REMARKS**

Claims 49-52, 56-60 and 64 are pending and under examination. New claims 68-83 have been added. Support for the new claims can be found throughout the specification and the claims as filed. In particular, support for new claims 68-75 and 76-83 can be found in claims 51 and 59, respectively, from which they depend. New claims 68-83 merely separately recite members of the Markush groups recited in claims 51 and 59. Accordingly, these new claims do not raise an issue of new matter and entry thereof is respectfully requested.

Applicants appreciate the indication by Examiner Negin that the previous prior art rejections have been withdrawn.

The provisional rejection of claims 49-52, 56-60 and 64 under the judicially created doctrine of obviousness-type double patenting as allegedly obvious over claims 26-28, 30, 32, 35, 36, and 39-41 of copending application serial No. 11/980,199 is respectfully traversed.

With respect to the provisional obviousness-type double patenting rejection, MPEP § 804(I)(B) sets forth the following:

The “provisional” double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that “provisional” double patenting rejection is the only rejection remaining in at least one of the applications.

**1. Nonstatutory Double Patenting Rejections**

If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer...

If “provisional” ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. [emphasis added]

Applicants note for the record that application serial No. 11/980,199 was filed October 29, 2007, and is a continuation application of the present application, which is the earlier filed application filed on August 6, 2001. To date, no prosecution has been carried out in application

**Application No.: 09/923,870**

serial no. 11/980,199. Applicants respectfully submit that the provisional obviousness-type double patenting rejection in the present application, which is the earlier filed application, should be withdrawn. Since this is the only outstanding rejection, the withdrawal of this rejection should permit the present application to proceed to allowance. Accordingly, Applicants respectfully request that the provisional obviousness-type double patenting rejection be withdrawn.

In light of the remarks herein, Applicant submits that the claims are now in condition for allowance and respectfully requests a notice to this effect. The Examiner is invited to call the undersigned if there are any questions.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

/Deborah L. Cadena/

Deborah L. Cadena  
Registration No. 44,048

4370 La Jolla Village Drive, Suite 700  
San Diego, CA 92122  
Phone: 858.535.9001 DLC:llf:cjh  
Facsimile: 858.597.1585  
**Date: September 15, 2008**

**Please recognize our Customer No. 41552  
as our correspondence address.**